

no substantial injustice has been inflicted upon the opposite party by denying him the benefit of a cross-examination, and that delay and injury will be visited upon the party relying upon the proof, an objection thereto on this ground ought not to prevail.

The order for the examination of a party, as a witness, is granted almost as a matter of course, leaving the objections to be made and considered when the testimony is brought in.

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[The proceedings in this case up to December, 1849, are very fully stated in the report of the case in 8 *Gill*, 376, and in 10 *G. and J.*, 159. The proceedings in this court since the cause was reinstated therein in 1849, are sufficiently stated in the following opinion of the Chancellor, delivered on the 1st of August, 1853, upon the hearing of the petition of the defendants, and the exceptions to the Auditor's report and accounts.]

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#### THE CHANCELLOR :

The original bill in this case was filed in March, 1834, and the cause, therefore, has been pending nearly twenty-five years, during which long period the complainant has been deprived, for the most part, of the support which, according to two several adjudications of the Court of Appeals, he is unquestionably entitled to. It would, therefore, be a subject of regret if any substantial and insurmountable objection existed to the speedy determination of the controversy.

After the decision of the Court of Appeals at the December term, 1849, and the reinstatement of the cause in this court, a commission issued, by consent, to John C. Mullikin to take further evidence, and the depositions of several witnesses were taken and returned by him in November, 1852. Among them is the deposition of Edward Tolson, who appears, by the return of the commissioner, to have been examined on the 19th of September, 1851. This deposition has, to some considerable extent, been made the basis of the last report of the Auditor, and the principal ground of objection to that report urged on the part of the defendants, refers to that deposition and the influence it has had upon the account.

It is to be remembered that the witness is himself a defend-